

## CHAPTER 16 POLE ATTACHMENT PROVISIONS FOR CABLE TELEVISION

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### 1600 PURPOSE, STANDARDS, AND FILING REQUIREMENTS

- 1600.1 This chapter shall implement the Commission's regulatory authority over the rates, terms and conditions for cable television use of existing utility company rights-of-way located within the District of Columbia, including the use of existing utility poles and underground conduits. This chapter also provides procedures for prompt processing of complaints regarding the rates, terms and conditions of such use.
- 1600.2 The Commission shall regulate the matters described in §1600.1 in accordance with District of Columbia law, federal law, and to the extent applicable, Federal Communications Commission rules and regulations.
- 1600.3 The Commission shall ensure that all rates, terms and conditions prescribed in accordance with this chapter are just and reasonable.
- 1600.4 Any utility company under the jurisdiction of the Commission entering into a pole attachment or conduit agreement shall submit the agreement for Commission review and approval. The Commission shall review the pole attachment or conduit placement as well as the rates for the pole attachment or conduit placement.
- 1600.5 One (1) original and twenty (20) copies of the pole attachment or conduit agreement shall be filed with the Commission Secretary not later than fourteen (14) days after final execution of the agreement.
- 1600.6 Within sixty (60) days, the Commission may take any one of the following actions:
- (a) Request additional information or data from the parties to the agreement;

- (b) Schedule an evidentiary hearing;
- (c) Issue an order approving the agreement; or
- (d) Issue an order rejecting the agreement.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §9 of the Cable Television Communications Act of 1981, D.C. Law 4-142, D.C. Code §43-1808 (1981 Ed.).

**SOURCE:** Final Rulemaking published at 31 DCR 6496 (December 21, 1984); as amended by Final Rulemaking published at 33 DCR 5667 (September 12, 1986).

## **1601 NOTICE OF REMOVAL AND PETITION FOR TEMPORARY STAY**

**1601.1** A utility company shall provide a cable television system operator no less than sixty (60) days written notice prior to the following:

- (a) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of a cable television pole attachment agreement; or
- (b) Any increase in pole attachment rates.

**1601.2** A cable television system operator may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to §1601.1, within fifteen (15) days of receipt of the notice. This submission shall not be considered unless it includes a copy of the notice and states in concise terms, the relief sought, the reasons for the relief, including a showing of irreparable harm and likely cessation of cable television service. The named respondent shall file an answer within seven (7) days of the date the Petition for Temporary Stay was filed.

**1601.3** No further filings under §1601.2 shall be considered unless requested or authorized by the Commission and no extensions of time shall be granted unless justified pursuant to Commission rules.

**SOURCE:** Final Rulemaking published at 31 DCR 6496, 6497 (December 21, 1984).

## **1602 COMPLAINTS**

**1602.1** Complaints relating to the rates, terms and conditions of the use of utility company rights-of-way located within the District of Columbia, including use of existing utility poles and under ground conduits, shall be filed in accordance with and will be governed by the procedures set forth in Chapter 1 of this title as such procedures pertain to processing of formal complaints, except as otherwise provided by this chapter.

**1602.2** A complaint may be filed by a cable television franchise, franchisee or by a utility company.



- 1602.3 The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable television franchisee and the utility company. If there is no present pole attachment agreement, the complaint shall contain the following:
- (a) A statement that the utility uses or controls poles, ducts or conduits used or designated, in whole or in part, for wire communication; and
  - (b) A statement that the cable television operator currently has attachments on some of these poles, ducts or conduits.
- 1602.4 The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable and shall specify all information and argument relied upon to justify the claim.
- 1602.5 In a case where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of the term or condition requires review of the associated rate, the complaint shall provide data and information in support of the claim. The data and information shall include, where applicable, the following information:
- (a) The depreciated installed cost of poles in the District of Columbia;
  - (b) The total number of poles owned and controlled or used by the utility;
  - (c) The total number of poles which are the subject of the complaint;
  - (d) The number of poles included in paragraph (c) of this section that are owned by the utility and that are leased to other users by the utility, and the annual share of pole costs allocated to the users (including the complainant), together with the methodology for such allocation; and
  - (e) The annual carrying charges for the poles owned and controlled or used by the utility.
- 1602.6 With respect to the data required by §1602.5, this data and information shall be based upon the cost methodology, prescribed by the Commission. Data shall be derived from Form M, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures shall be provided to the complainant.
- 1602.7 Where the attachments to the data required by §1602.5 involve ducts, conduits, or rights of way, in whole or in part, appropriate and equivalent data and information shall be filed.
- 1602.8 The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.
- 1602.9 If any of the information required in §1602.5 is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall

include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in §1602.5 after a reasonable request.

- 1602.10 The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6497 (December 21, 1984).

### **1603 RESPONSE AND REPLY**

- 1603.1 Respondent shall have thirty (30) days from the date the complaint was filed within which to file a response. Complainant shall have twenty (20) days from the date the response was filed within which to file a reply.

- 1603.2 Extensions of time to file are not contemplated unless justification is shown pursuant to the Commission's Rules of Practice and Procedure. Except as otherwise provided herein, no other filings and no motions other than for extension of time shall be considered unless authorized by the Commission.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6499 (December 21, 1984).

### **1604 DISMISSAL OF COMPLAINTS**

- 1604.1 A complaint against a utility shall be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication.

- 1604.2 If the complaint does not contain substantially all the information required under §1602, the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the information is not available from public records or from the respondent utility after reasonable request.

- 1604.3 Failure by the complainant to respond adequately to a Commission request for additional information shall be cause for dismissal.

- 1604.4 Dismissal under provisions of §1604.2 shall be with prejudice if the complaint has been dismissed previously. The complaint may be refiled no less than six (6) months from the date it was dismissed.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6499 (December 21, 1984).

### **1605 COMMISSION CONSIDERATION OF THE COMPLAINT**

- 1605.1 In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available documents made by the parties and may accept, subject to rebuttal, studies that have been conducted.



The Commission may also request that one (1) or more of the parties make additional filings or provide additional information.

- 1605.2 Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.
- 1605.3 The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable.
- 1605.4 The Commission shall determine whether the rate, term or condition complained of is just and reasonable.
- 1605.5 If the Commission determines that the complainant has not established a *prima facie* case or that the rate, term, or condition complained of is just and reasonable, the Commission shall deny the complaint.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6500 (December 21, 1984).

## 1606 REMEDIES

- 1606.1 If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may take any of the following actions:
- (a) Terminate the unjust and unreasonable rate, term or condition; or
  - (b) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6500 (December 21, 1984).

## 1607 ENFORCEMENT

- 1607.1 If the respondent fails to obey an order imposed under this subpart, the Commission on its own motion or upon the motion of the complainant may order the respondent to show cause why it should not cease and desist from violating the Commission's order.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6500 (December 21, 1984).

## 1608 TIME CONSTRAINTS

- 1608.1 With respect to any individual matter, the Commission shall take final action within three hundred and sixty (360) days after the filing of the complaint.

SOURCE: Final Rulemaking published at 31 DCR 6496, 6501 (December 21, 1984).

**1609 - 1612 [RESERVED]****1613 RATES FOR REARRANGEMENT OR REMOVAL OF FACILITIES**

- 1613.1 When the utility company has an alternative use for the facilities, a cable operator shall relinquish its space, or pay for construction of new facilities, or pay for rearrangement of facilities. This provision shall not apply to facilities where the cable operator has funded the construction of the broadband transport facilities.
- 1613.2 Rearrangement of facilities shall be an appropriate alternative only if such rearrangement will not adversely affect the present or future needs of the utility.
- 1613.3 The Commission shall order the cable operator to pay the total cost, or some portion thereof, of rearrangement of facilities in the following circumstances:
- (a) Where the utility needs to use the facilities being used by a cable operator for the utilities' own needs; or
  - (b) Where leasing to another party would produce a net benefit, as determined by the Commission, to utility ratepayers in the District of Columbia.
- 1613.4 In determining usable space on a pole, the utility shall adhere to the applicable codes governing ground clearance and safety zones.
- 1613.5 When determining the amount of space on a pole to be assigned to a cable operator, the utility shall take into account applicable safety codes, as well as electric and telephone lines plus the necessary space for the cable and its distribution box.

SOURCE: Final Rulemaking published at 33 DCR 5667, 5668 (September 12, 1986).

**1699 DEFINITIONS**

- 1699.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Commission** - the Public Service Commission of the District of Columbia.

**Complainant** - a cable television system operator or a utility who files a complaint.

**Complaint** - a filing by either a cable television system operator or a utility alleging that a rate, term or condition for a pole attachment is not just and reasonable.

**Pole Attachment** - any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility company.

**Respondent** - a cable television system operator or a utility against whom a complaint is filed.

**SOURCE:** Final Rulemaking published at 31 DCR 6496, 6501 (December 21, 1984).

